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IN THE

Supreme Court of the United States

October Term, 1950

No. 210

HENRY F. BUTLER and ESTELLE K. BUTLER,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HENRY F. BUTLER,
Continental Building,
Washington, D. C.,
Attorney for Petitioners.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners, Henry F. Butler and Estelle K. Butler, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in No. 10,243 entered on February 20, 1950 affirming the decision of the Board of Tax Appeals for the District of Columbia filed February

21, 1949 in Docket No. 1134, which denied Petitioners' claims for refunds of District of Columbia income taxes for the calendar years 1942, 1943, 1944 and 1945 on the grounds that they were domiciled in the District of Columbia on the 31st day of December of each of those years.

STATEMENT OF THE MATTER INVOLVED

This case involves the questions of multiple domicile and triple taxation.

For the years 1939 through 1946, Congress levied an income tax on individuals *domiciled* in the District of Columbia on the last day of the tax year.[1] An individual residing, but not domiciled, in the District was not subject to the income tax.

Petitioners have resided in the District the major part of each year from the fall of 1934 to the present, but have always claimed, and still claim, they were not domiciled in the District on the 31st day of December 1942, 1943, 1944 or 1945 (the years here involved) nor at any other time, but that during all of the years here involved they were domiciled in Woolwich, Maine. (R. 2A-7A).

From 1921 to the present time, petitioners have had their permanent home in Woolwich, Maine, and have owned their present home there since 1926. From 1921 to the fall of 1927 they lived year 'round at Woolwich, Maine. From the fall of 1927 to the fall of 1930 while petitioner husband was attending Harvard Law School they resided in Cambridge, Massachusetts during the academic year, always returning to their home in Woolwich, Maine. From the fall of 1930 to the fall of 1934 while petitioner hus-

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[1] District of Columbia Code (1940) Title 47, Sec. 1502, provided in part: "there is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rate . . ."

band was practicing law in Boston, they continued to reside most of the year in Massachusetts, always returning to their home in Maine. In the fall of 1934 they came to the District of Columbia so that petitioner husband could be associated with his father in the practice of law, and have resided there the major part of each year since then, still always maintaining, and at every opportunity (several times in every year) returning to their home in Woolwich, Maine. (R. 2A-7A.)

The Court below in a previous case[2] recognized petitioners were domiciled in Woolwich, Maine, 1921-1930, and found they were domiciled in Cambridge, Massachusetts 1930-1940.

Petitioners contend they re-established their domicile in Woolwich, Maine in 1941 and have maintained it there ever since. (R. 7A-9A; and throughout the Record).

The Tax Assessor of the District of Columbia in April, 1942 recognized that Petitioners were domiciled in Woolwich, Maine for [illegible] and refunded to them income taxes they had paid f[illegible]at year. (Pet's Ex. No. 14; R. 61A).

The Supreme Judicial Court of the State of Maine in March, 1943 found Henry F. Butler to be domiciled in Woolwich, County of Sagadahoc, State of Maine and admitted him on motion to practice in that State. (Pet's Ex. No. 15; R. 62A).

The Court below has found and stated in its opinion that Petitioners are registered voters in Maine during the years here involved. (R. 118).

The record shows that Petitioner Henry F. Butler paid all taxes levied against him as a domiciliary of Woolwich, Maine, during the years here involved. (R. 8A, 9A, 15A; Pet's Ex. Nos. 2, 3, 4, 5, 6, 7, 8, R. 58A-60A-4).

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[2] *Butler et al* v. *District of Columbia*, 80 U. S. App. D. C. 310; 153 F. 2d 617, (1946).

The record is replete with unrefuted evidence that Petitioners at all times here involved had the fixed and definite intention to maintain their permanent home and domicile in Maine. The portion of testimony quoted in the opinion of the Court below while incomplete and therefore not telling the whole story, nevertheless confirms their intentions to maintain their permanent home in Maine, though truthfully admitting (as must practically every honest person residing in this Federal District and claiming domicile elsewhere) that it is impossible to answer with precision the question "When do you expect to pull up stakes in the District of Columbia, get rid of your law practice, and your home here, and go back to Woolwich and live, physically reside there permanently?" (R. 33A-35A).

Neither the Board of Tax Appeals nor the Court below found any overt or definitive act on the part of the petitioners to establish domicile in the District but only that they reside in the District and have failed to show a definite intent to return to Woolwich, Maine at a fixed time.

In its opinion, the Court of Appeals states:

"In *Arbaugh* v. *District of Columbia*[3] we held that under the doctrine of *District of Columbia* v. *Murphy*[4] a person who lives in the District and has no fixed and definite intent to return to a former domicile is domiciled in the District of Columbia *for local income tax purposes*. We said:

> "The principle thus laid down by the Supreme Court may or may not be in conflict with the general idea that one does not lose a domicile until he has a fixed intent to establish another one. However that may be, it seems perfectly clear that the Court held that for *District of Columbia income tax purposes* a per-

[3] *Arbaugh* v. *District of Columbia*, 85 U. S. App. D. C. 176 F. 2d 28, (1949).

[4] *District of Columbia* v. *Murphy*, 314 U. S. 441; 86 L. Ed. 329; 62 S. Ct. 303, (1941).

> son in Government employ here does not retain his former domicile unless he has a fixed and definite intent to return to it. The effect of this rule is that a person without any intent one way or the other is domiciled here if he lives here." (Emphasis added).

It concludes: ". . . the present case falls within the doctrine of the *Arbaugh* case. Upon the authority of that case, the decision of the Board of Tax Appeals in the case at bar must be affirmed." (R. 119).

The result is that while the Court of Appeals recognizes that petitioners are domiciled in Woolwich, Maine for some purposes, it holds they are domiciled in the District of Columbia for local income tax purposes.

The further result is that petitioners are liable for domiciliary taxes both in Woolwich, Maine and in the District of Columbia.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347 (a)). The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on February 20, 1950 (R. 118). Petition for Rehearing was denied May 23, 1950. (R. 128). This Court extended to and including July 20, 1950 the time within which to file Petition for Writ of Certiorari. (R. 130)

QUESTIONS PRESENTED

Has the Court below properly applied the law of domicile as set forth by this Court in the *Murphy* case?

Does the principle laid down by this Court in the *Murphy* case sanction multiple domicile and consequent multiple taxation?

Is there a different law and criterion of domicile "for local income tax purposes" than for other purposes?

Can an individual in any circumstances have more than one domicile at a time?

Can residence in the District of Columbia, no matter how long continued, in the teeth of an unwavering intent not to establish a permanent home in the District, while all the time maintaining a permanent home of long standing at the place claimed as domicile, inflict an unwelcome domicile in the District upon such resident?

Has the Court below given full faith and credit to the finding of domicile in the State of Maine by the Supreme Judicial Court of the State of Maine? Has it given full weight to the fact that petitioners are subject to all domiciliary taxes in Maine, which will continue despite its decision and judgment here?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This Court should review the decision and judgment here in question because the United States Court of Appeals for the District of Columbia Circuit:

1. has not given proper effect to an applicable decision of this Court;

2. has decided a question of general importance, or of substance relating to the construction or application of a statute of the United States (i.e., the question of multiple domicile for specific purposes, in the construction and application of the District Income Tax Act) which has not been, but should be, settled by this Court;

3. has rendered a decision in conflict with the decisions of other circuit courts of appeal, (i.e., that an individual simultaneously may have different domiciles for different purposes).

This is a matter of utmost importance to every individual residing in the District of Columbia who desires to retain his domicile and right to vote in the state where he maintains his permanent home. The decision, one of expediency to enable the District to collect taxes, disregards the most sacred and valuable right a citizen can have; his right to retain his franchise to vote. Equity and justice to thousands of individuals serving their government in the District demands a review of this case and a clear statement of the applicable law, whether in affirmance or reversal of the confusing decision below in this case.

PRAYER

WHEREFORE, your petitioners pray that a Writ of Certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the District of Columbia Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record and of all proceedings before it in the case numbered and entitled on its docket Number 10,243, *Henry F. Butler and Estelle K. Butler, Petitioners* vs. *District of Columbia, Respondent,* to the end that such cause may be reviewed and determined by this Court as provided by law.

HENRY F. BUTLER
and
ESTELLE K. BUTLER
Petitioners
by HENRY F. BUTLER
Attorney for Petitioners
Henry F. Butler

IN THE

Supreme Court of the United States

October Term, 1950

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Petitioners,

v.

DISTRICT OF COLUMBIA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is printed in full in the record (R. 118-119).

JURISDICTION

Jurisdiction is invoked under Section 240 (a) of the Judicial Code, as amended by Act of February 13, 1925 (28 U. S. C. 347 (a)).

STATEMENT OF THE CASE

The case has been stated briefly in the preceding petition under Statement of the Matter Involved, which is hereby adopted and made a part hereof.

SPECIFICATION OF ERRORS

The Court of Appeals erred in affirming the decision of the District of Columbia Board of Tax Appeals holding that these petitioners were domiciled in the District of Columbia on the 31st day of December in each of the years 1942, 1943, 1944 and 1945 and denying their claims for refunds of income taxes paid to the District for those years. That Court further erred in giving effect to an applicable decision of this Court and in reaching a decision which results in holding that these petitioners simultaneously have two domiciles and consequently are liable for all domiciliary taxes in both the State of Maine and the District of Columbia.

ARGUMENT

The Statement of the case and a consideration of the results flowing from the decision and judgment of the Court below are the strongest arguments in favor of this Court reviewing this case and handing down a clear statement of the applicable law of domicile as it relates to the Income Tax Act for the District of Columbia.

Under long established law, an individual always has one domicile, but never more than one at the same time. An individual may have any number of places of residence, but only one such place can be his domicile at any one time. The establishment of a domicile requires a conjunction of physical presence at a dwelling place with the present intent to make it one's home. A domicile once established continues until a new domicile is acquired.

No amount of residence at a place without the intent to make it one's permanent home results in establishment of a domicile; but if physical presence at a dwelling place and the bona fide intent to make it one's permanent home occurs even for a moment, it becomes one's domicile. (American Law Institute Restatement, Conflicts, Law of Domicile, Sections 9-24).

This Court in *District of Columbia* v. *Murphy*, 314 U. S. 441, laid down certain broad rules to be applied in determining domicile under the District Tax Act. Surely this Court did not intend to expound any novel doctrine of multiple domicile, or wholly alter the long established criteria of physical presence *and* the *animus manendi;* nor could it have intended to sanction findings of domicile in the District merely as an aid to the collection of the income tax. Indeed, this Court said "while the intention to return must be fixed, the date need not be; while the intention to return must be unconditional the time may be, and in most cases, of necessity is, contingent. The intention must not waver before the uncertainties of time, but one may not be visited with unwelcome domicile for lacking the gift of prophecy." This Court (at page 458) warned that Congress was concerned lest there be "triple taxation."

The result of the decision below is the very "triple taxation" this Court warned against.

The Court of Appeals for support cites its own decision in *Arbaugh* v. *District of Columbia*, 85 U. S. App. D. C. .....; 176 F 2d 28 (1949). It is submitted the *Arbaugh* case is bad law, contrary to the rules laid down by this Court and to the long established law of domicile, and should be reversed.

The decision in this case puts in jeopardy the domiciliary and voting status of nearly every person serving his government in the District of Columbia. Practically none of these persons knows just when he will "pull up stakes"

from the District and return to the place whence he came, "there physically, permanently to reside." Yet failure to answer that "sixty-four dollar question" the right way to satisfy the District Tax authorities apparently will be held to inflict District of Columbia domicile on the contestant, even though he unquestionably and concededly has domicile elsewhere. In the first place, those of us who claim domicile elsewhere will not concede we have any "stakes" down in the District; and the law of domicile does not require one to promise to return to his domicile at any specific time, nor "there physically, permanently to reside."

This question of domicile also is of vital importance in determining one's right to vote, where death duties are payable, where the marital situs is, and for many purposes other than the collection of District of Columbia income taxes.

Determination of domicile in the District of Columbia without regard to the fact of domicile in another state is a flagrant disregard of states' rights and a failure to accord full faith and credit to the acts of another jurisdiction which has equal dignity and equal rights with the District of Columbia. The District well might be indignant if other jurisdictions claimed domicile of persons admittedly domiciled here upon the same grounds that the Court of Appeals would inflict District domicile on these petitioners.

This Court does not need further argument. This Court is keenly aware of the desire of thousands of individuals who for patriotic or business reasons must reside in this Federal District to retain their domiciles and voting rights. Such persons are willing to pay taxes as *residents* of the District, and under existing laws are liable as *residents*. They have every intention not to abandon their domiciles elsewhere and not to establish permanent homes and domiciles in the District. This Court knows members of the

Federal Judiciary serving and residing in the District but domiciled ~~elsewhere~~ elsewhere who, under the decision of the Court of Appeals in this case, must be held to be *domiciled* in the District. This Court knows that such persons are *not* domiciled in the District, regardless of any such decision.

CONCLUSIONS

This Court should review this case and state the law of domicile applicable to the District of Columbia so all may understand.

Respectfully submitted,

HENRY F. BUTLER,
Attorney for Petitioners.

Henry F. Butler

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

VERNON E. WEST,
Corporation Counsel, D. C.,
CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,
GEORGE C. UPDEGRAFF,
Assistant Corporation Counsel, D. C.,
Attorneys for Respondent,
District Building,
Washington 4, D. C.

DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 107) has been reproduced in State

and Local Tax Service, "D. C." and "Md." (Prentice-Hall, Inc.), ¶ 13,022, page 13,026, and the opinion of the court below [United States Court of Appeals for the District of Columbia Circuit] (R. 118) is reported in 181 F. 2d 790.

STATUTE INVOLVED

The statute involved is the District of Columbia Income Tax Act of 1939, 53 Stat. 1087, ch. 367. Section 2 (a) of that act provided, insofar as here pertinent, as follows:

> "Tax on individuals.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

However, except for certain purposes not here material, said Act of 1939, which imposed the income tax *inter alia*, upon individuals domiciled within the District of Columbia on the last day of the taxable year was repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, by the provisions of Article I, Title I, Sec. 1 of the District of Columbia Revenue Act of 1947, 61 Stat. 331, ch. 258. Under Article I, Title I, Sec. 4(s) of the 1947 Act, *supra*, as amended by Title IV, Sec. 401 of the District of Columbia Revenue Act of 1949, ... Stat. ..... , effective for taxable years beginning after December 31, 1949,[1] the word "resident" is defined as follows:

> "(s) The word 'resident' means every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for

[1] See 1 U. S. Code Congressional Service 1949, page 135.

more than seven months of the taxable year, whether domiciled in the District or not. The word 'resident' shall not include any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year."

The income tax levied by the Revenue Act of 1947, *supra*, upon individuals is upon every "resident". Among the amendments to the 1947 act contained in the 1949 act was an increase to $4000.00 of the exemption allowed each resident as a credit against net income.[2]

SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari. The question involved is one of fact, viz., petitioners' domicile on the last day of each of the calendar years 1942 to 1945, inclusive. That question is academic since the statute involved was repealed in 1947, and the liability of individuals for the District of Columbia income taxes now rests upon a new basis.

The matter involved is not, as petitioners contend, "of utmost importance to every individual residing in the Dis-

[2] Ib. page 138.

trict of Columbia who desires to retain his domicile and right to vote in the state where he maintains his permanent home." The matter can be of importance only to individuals such as these petitioners who at this late date may litigate the question of their liability under the now repealed District of Columbia Income Tax Act of 1939, *supra*.

ARGUMENT

The Petition Should Be Denied

This Court has stated that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 88 L. Ed. 408, 64 S. Ct. 406; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 80 L. Ed. 229, 56 S. Ct. 190. This statute involved in the case at bar, like the one involved in *District of Columbia* v. *Pace, supra*, is limited in its operation to the District of Columbia, but, unlike the one involved in the *Pace* case, the one here involved has been repealed. As a matter of fact, this court declared in the *Pace* case that it did not take the case "to determine where Mr. Pace was domiciled" (320 U. S. 700). Argument and contentions of the petitioners to the contrary notwithstanding, they are asking this court to take this case merely to determine where they were domiciled on the last day of each of calendar years 1942 to 1945, inclusive. The question of domicile is a question of fact, *District of Columbia* v. *Murphy, infra*. The Board of Tax Appeals found, as a fact that petitioners were domiciled within the District on the last day of each of the years involved. The Court of Appeals had power to set aside that determination

of the Board only if the Court was convinced, which in this case it was not, that the Board was clearly wrong. This Court is not called upon to separate factual from legal grounds of decisions and to determine whether affirmance of the Board of Tax Appeals by the Court of Appeals could stand on questions of law alone. *District of Columbia* v. *Pace, supra.*

Rule 38, par. 5(c) of the Revised Rules of this Court indicates the nature of the reasons for which a review on a writ of certiorari will be granted. Applying those reasons to the instant case, it seems clear that a writ should not issue in this case. There is no question of general importance involved. The statute involved has been repealed and the basis of individual liability for District income taxes has been changed. The question can be of no importance to any one save a few individuals like these petitioners who are now in litigation over the question of their liability under the now repealed District of Columbia Income Tax Act of 1939, *supra.* Furthermore, the general question of the liability of individuals for the tax imposed under that repealed act was most exhaustively resolved by this Court in *District of Columbia* v. *Murphy,* 314 U. S. 441, 86 L. Ed. 329, 62 S. Ct. 303.

Petitioners urge that this case is important because the question of domicile is important in determining ones right to vote, where death duties are payable, where the marital status is, and for many purposes other than the collection of District of Columbia income taxes. Inconsistency between the right to vote in one place and the assessment of inheritance taxes by another jurisidiction based upon the voter's domicile at the time of his demise is not novel. *Texas* v. *Florida,* 306 U. S. 398, 83 L. Ed. 817, 59 S. Ct. 563, 121 A. L. R. 1179. In this connection it will be recalled that this court has declared that "A vote cast without chal-

lenge and adjudication may indicate only laxity of the state officials, and even an adjudication of the right to vote cannot preclude the levy of a tax by an arm of the Federal Government." *District of Columbia* v. *Murphy, supra.*

From the foregoing it seems clear that this case involves no question of general importance. Continuing, therefore, with the reasons set forth in said Rule 38, par. 5(c) of the Revised Rules of this Court, it is equally clear that there is in this case no question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this Court.

On page 6 of their petition, petitioners propound the following query: "Has the Court below given full faith and credit to the finding of domicile in the State of Maine by the Supreme Judicial Court of the State of Maine?". The "finding of domicile" to which petitioners apparently allude is the fact that petitioner Henry F. Butler was admitted to practice as an attorney and counselor in the Judicial Courts of the State of Maine, and the certificate in evidence thereof contains the phrase "Henry F. Butler of Woolwich, in the County of Sagadohoc." Said certificate also recites that said petitioner complied "with all the requirements of law regulating such admission" (R. 62A). There is nothing, however, in said certificate to indicate that said Henry F. Butler, much less petitioner Estelle K. Butler, was domiciled within the State of Maine on the 31st day of each December from 1942 to 1945, inclusive. Moreover, that such an ex parte proceeding which resulted in no judgment, money or otherwise, is not within the meaning of the phrase "Judicial Proceedings" as the same appears as part of the full faith and credit clause of Art. IV, Sec. 1 of the Federal Constitution is too elementary to require any citation of authorities.

CONCLUSION

It is submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

VERNON E. WEST,
Corporation Counsel, D. C.,

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,

GEORGE C. UPDEGRAFF,
Assistant Corporation Counsel, D. C.,
Attorneys for Respondent,
District Building,
Washington 4, D. C.